

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :	DATE FILED: _____
v.	: CRIMINAL NO. _____
PERRY SMITH	: VIOLATIONS:
KEVIN CLEVELAND	: 18 U.S.C. § 1951 (conspiracy to commit
	: robbery which interfered with interstate
	: commerce - 1 count)
	: 18 U.S.C. § 1951 (interference with
	: interstate commerce by robbery -1 count)
	: 18 U.S.C. § 924(c)(1) (carrying a firearm
	: during a crime of violence - 2 counts)
	: 18 U.S.C. § 2119 (robbery of a motor
	: vehicle - 1 count)
	: 18 U.S.C. § 2 (aiding and abetting)
	Notice of forfeiture

SUPERSEDING INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

1. At all times material to this superseding indictment, the Shernoff Salads Company store located at 1400 Warfield Street, Philadelphia, Pennsylvania, was a business engaged in interstate commerce.

THE CONSPIRACY

2. From on or about August 12, 2003, through on or about August 14, 2003, at Philadelphia, in the Eastern District of Pennsylvania, defendants

**PERRY SMITH and
KEVIN CLEVELAND**

conspired and agreed together to commit robbery, which robbery would unlawfully obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, in that

the defendants PERRY SMITH and KEVIN CLEVELAND conspired to unlawfully take and obtain currency and property from Shernoff Salads Company, in the presence of employees of that business and against their will, by means of actual and threatened force, violence, and fear of injury, immediate and future, to their person and property in their possession, in violation of Title 18, United States Code, Sections 1951(a), 1951(b)(1) and 1951(b)(3).

MANNER AND MEANS

3. It was part of the conspiracy to rob Shernoff Salads Company, and to obtain the cash proceeds and property from the business, at gunpoint and by threatening to use and using force and violence against the store employees.

OVERT ACTS

In furtherance of the conspiracy and to effect the object of the conspiracy, the following overt acts, among others, were committed on or about August 12, 2003 through on or about August 14, 2003, in Philadelphia, in the Eastern District of Pennsylvania:

1. On or about August 13, 2003, defendant KEVIN CLEVELAND carjacked a 1990 Ford Tempo with Pennsylvania tag EYX4649 from a pizza delivery man and stole the license plate from that vehicle.

2. On or about August 13 or 14, 2003, defendant KEVIN CLEVELAND placed Pennsylvania tag EYX4649 on a silver 1992 Oldsmobile Delta 88 with VIN 1G3HN53L1N1828471 that was stolen on August 12, 2003.

3. Defendants PERRY SMITH and KEVIN CLEVELAND traveled together in the stolen silver 1992 Oldsmobile Delta 88 with VIN 1G3HN53L1N1828471 to the Shernoff Salads Company, 1400 Warfield Street, Philadelphia, armed with firearms.

4. Defendants PERRY SMITH and KEVIN CLEVELAND entered Shernoff Salads Company together carrying concealed firearms and pretended to be customers of the store for a short period of time.

5. Defendants PERRY SMITH and KEVIN CLEVELAND brandished firearms, menaced the store manager, shot a store employee, and took money from the cash box.

6. Defendants PERRY SMITH and KEVIN CLEVELAND stole at gunpoint an undetermined amount of United States currency from Shernoff Salads Company.

7. Defendants PERRY SMITH and KEVIN CLEVELAND fled from the store and got into a stolen silver 1992 Oldsmobile Delta 88 with VIN 1G3HN53L1N1828471 with Pennsylvania Tag EYX-4649 to make their getaway.

_____All in violation of Title 18, United States Code, Sections 1951(a), 1951(b)(1) and 1951(b)(3).

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraph 1 and Overt Acts 1 through 7 of Count One of this superseding indictment are incorporated here.

2. On or about August 14, 2003, at Philadelphia, in the Eastern District of Pennsylvania, defendants

PERRY SMITH and KEVIN CLEVELAND

unlawfully obstructed, delayed and affected commerce and the movement of articles and commodities in commerce, by robbery, and aided and abetted such conduct, in that defendants PERRY SMITH and KEVIN CLEVELAND unlawfully took and obtained personal property, that is, an undetermined amount of United States currency, belonging to the Shemoff Salads Company, from employees, against their will, by means of actual and threatened force, violence, and fear of injury, immediate and future, to their person and property in their custody and control.

In violation of Title 18, United States Code, Sections 1951, 1951(b)(1), 1951(b)(3), and 2.

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

On or about August 14, 2003, at Philadelphia, in the Eastern District of
Pennsylvania, defendants

**PERRY SMITH and
KEVIN CLEVELAND**

knowingly used and carried, and aided and abetted the use and carrying of, firearms, during and
in relation to a crime of violence for which the defendants may be prosecuted in a court of the
United States, that is, conspiracy to interfere with interstate commerce by robbery and the
interference with interstate commerce by robbery, of Shernoff Salads Company, in violation of
Title 18, United States Code, Section 1951.

In violation of Title 18, United States Code, Sections 924(c)(1) and 2.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

On or about August 13, 2003, at Philadelphia, in the Eastern District of
Pennsylvania, defendant

KEVIN CLEVELAND,

with intent to cause death and serious bodily harm, did take from the person and presence of
another, by force and violence and by intimidation, a motor vehicle, that is, a 1990 Ford Tempo
with Pennsylvania Tag EYX-4649, that had been transported, shipped and received in interstate
commerce.

In violation of Title 18, United States Code, Section 2119.

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

On or about August 13, 2003, at Philadelphia, in the Eastern District of Pennsylvania, defendant

KEVIN CLEVELAND

knowingly used and carried, and aided and abetted the use and carrying of a firearm, during and in relation to a crime of violence for which the defendant may be prosecuted in a Court of the United States, that is, robbery of a motor vehicle from Terry Muchison, in violation of Title 18, United States Code, Section 2119.

In violation of Title 18, United States Code, Section 924(c)(1).

NOTICE OF FORFEITURE

As a result of the violation of Title 18, United States Code, Section 924(c), set forth in this superseding indictment, defendants

**PERRY SMITH and
KEVIN CLEVELAND**

shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 924(d), and Title 28, United States Code, Section 2461(c), the firearms and ammunition involved in the commission of this offense.

All pursuant to Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 924(d).

A TRUE BILL:

GRAND JURY FOREPERSON

PATRICK L. MEEHAN
United States Attorney